

AN ORDINANCE

BY CITY UTILITIES COMMITTEE

01- 0 -0237

**AN ORDINANCE TO REPEAL ORDINANCE # 00-O-1660 WHICH
WAIVES 30% OF THE CITY OF ATLANTA SOLID WASTE SERVICE
FEE FOR SENIOR CITIZENS WITH ANNUAL INCOMES OF LESS
THAN \$39,000 AND FOR OTHER PURPOSES.**

WHEREAS, Ordinance #00-O-1660, which waives 30% of the City of Atlanta solid waste service fee for senior citizens with annual incomes of less than \$39,000, was adopted by the City Council on November 20, 2000 and returned without signature of the Mayor, thus approved per Section 2-403 of the City Charter on November 29, 2000; and

WHEREAS, solid waste service fees are fees for services rendered by the City of Atlanta;
and

WHEREAS, the City Law Department has repeatedly advised over the years that the waiver of fees for services constitutes a gratuity in violation of Article 3, Section 6, Paragraph 6 of the Constitution of the State of Georgia,

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY
ORDAINS AS FOLLOWS:**

Ordinance #00-O-1660 which waives 30% of the City of Atlanta solid waste service fee for taxpayers age sixty-five and over whose annual household income does not exceed \$39,000, is hereby repealed.

CITY COUNCIL
ATLANTA, GEORGIA

00-0-1660

An Ordinance by Councilmembers Jim Maddox, Michael J. Bond, Cleta Winslow, Sherry Dorsey, "Able" Mable Thomas and Derrick Boazman
As Amended by Finance/Executive Committee

An Ordinance authorizing the City of Atlanta to waive 30% of the City of Atlanta solid waste service fees for taxpayers age sixty-five and over whose annual household income does not exceed (\$39,000) thirty nine thousand dollars.

WHEREAS, the City of Atlanta bills and collects solid waste service fees from all property owners in the City of Atlanta regardless of age and income status; and

WHEREAS, there are 10,910 property owners age 65 and over with income less than \$39,000 in the City of Atlanta who pay property taxes and solid waste service fees; and

WHEREAS, the City of Atlanta exempts all taxpayers regardless of age with income less than eight thousand dollars from paying the recycling portion of the solid waste service fee in the amount of thirty dollars; and

WHEREAS, the exemption from the recycling fee is not given to qualifying taxpayers unless application is made for the exemption to the City of Atlanta each year the exemption is sought; and

WHEREAS, many of these 10,910 property owners age 65 and over with income less than \$39,000 are finding it increasingly difficult to pay property taxes and solid waste service fees each year because of increases in property taxes and solid waste service fees;

NOW, THEREFORE BE IT ORDAINED that any property owner who has filed for and received an *overage exemption, being age 65 and over and with income less than \$39,000*, be granted exemption from paying 30% of their solid waste service fees on the property for which the overage exemption was granted; and

BE IT FURTHER ORDAINED that the exemption from paying 30% of their solid waste service fee remains unchanged until such time as the ownership or exemption status changes for the property for which the overage exemption was granted; and

BE IT FURTHER ORDAINED that the City of Atlanta ease the burden on each taxpayer in this city age 65 and over with income less than \$39,000 by exemption from 30% of their solid waste service fee beginning with tax year 2001 on the property for which the overage exemption was granted.

BE IT FINALLY ORDAINED that the City of Atlanta ease the burden on any property owner who has filed for and received an overage exemption, being age 65 and over with income less than \$39,000, by granting amnesty from paying delinquent solid waste service fees owed to the City of Atlanta for year 2000 and prior years, on property for which overage exemption was granted.

The income value in this ordinance is the resident's adjusted gross income together with the adjusted gross income of the resident's spouse who resides at such homestead, and does not exceed the maximum amount that may be received by an individual and an individual's spouse under the Federal Social Security Act.

A true copy,

Rhonda Daughin Johnson
Municipal Clerk, CMC

ADOPTED as amended by Council
RETURNED WITHOUT SIGNATURE OF THE MAYOR
APPROVED as per City Charter Section 2-403

November 20, 2000

November 29, 2000

RCS# 2419
11/20/00
3:53 PM

Atlanta City Council

Regular Session

00-O-1660

Solid Waste Service Fees do not exceed
\$39,000.00 for Seniors
ADOPT AS AMEND

YEAS: 8
NAYS: 6
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0
ABSENT 0

N McCarty	Y Dorsey	N Moore	Y Thomas
Y Starnes	N Woolard	Y Martin	N Emmons
Y Bond	N Morris	Y Maddox	NV Alexander
Y Winslow	N Muller	Y Boazman	NV Pitts

00-O-1660



CITY OF ATLANTA

BILL CAMPBELL
MAYOR

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CLIFFORD E. HARDWICK, IV
CITY ATTORNEY

April 10, 1997

The Honorable Clair Muller
Atlanta City Council, District 8
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

Re: Whether the City can provide garbage pick-up services, and impose charges for such services not equal to the benefits received

Dear Clair:

This is in response to your request for an opinion on the validity of legislation which would impose a schedule of charges for garbage pick-up services by which some citizens would pay no charges, or reduced charges, regardless of the amount of services provided. I understand that the Council is considering two pieces of legislation, 96-O-1365, which would direct the development of volume- or incentive-based billing for garbage pick-up, and 95-O-1864, which would retain the present property frontage basis of billing for single-family residences, and billing by dwelling unit or container for multi-family residences, trailer parks, and the like, but would exempt persons over 65 years of age from all or part of the bills, on a basis determined by income. It is my opinion that while the City has wide discretion for determining the way in which it provides services to its citizens, if it establishes different charges based on differences in service, the differential must have some reasonable relation to the amount of difference in service or its rates may be invalidated for having produced an unjust discrimination.

The Honorable Clair Muller

April 16, 1997

Page 2

Any discussion of limitations on the City's ability to set rates for services must begin by acknowledging the legal principle that where municipalities have the charter power to do a particular act in a discretionary manner or way, the courts will not control the manner or way in which it acts unless the municipality manifestly abuses its discretion. *Macon Ambulance Service, Inc. v. Snow Properties, Inc.*, 217 Ga. 262, 127 S.E.2d 598 (1962). The City of Atlanta's ability to provide garbage pick-up services, and to charge fees for these services, is one of the enumerated powers granted by its charter:

To levy, fix, assess, and collect a garbage, refuse, and trash collection and disposal and other sanitary service charge, tax, or fee for such services as may be necessary in the operation of the city from all individuals, firms, and corporations residing in or doing business therein benefiting from such services . . .

1996 City Charter, Section 1-102(c)(26). An additional source of authority for this activity is the Georgia Revenue Bond Law, which authorizes municipalities and other governmental bodies "to prescribe, revise, and collect rates, fees, tolls or charges for the services, facilities, or commodities furnished or made available by" operations connected with "the collection, treatment, reuse, or disposal of solid waste." O.C.G.A. Sections 36-82-61(4)(C)(iii) and -62(a)(3). Georgia municipalities have also been held to have the authority to charge differential rates for services, for example, for water service. *See, e.g., Zepp v. Mayor & Council of City of Athens*, 225 Ga. 449, 339 S.E.2d 576 (1986).

It is important, however, to examine closely the reasoning behind the Georgia appellate rulings, such as *Zepp*, which validate differential charges. In *Zepp*, the Georgia Supreme Court was asked to strike down the City of Athens' higher charges for water services to customers located outside its jurisdictional limits. When it declined to do so (*see, also*, the subsequent Georgia Court of Appeals ruling at 180 Ga.App. 72, 348 S.E.2d

The Honorable Clair Muller

April 16, 1997

Page 3

673 (1986)), the Supreme Court noted that its decision was premised on the fact that water service outside the jurisdictional limits was based solely on a voluntary contract with the City of Athens, thereby confining the Court's review of the rights of the grievants to their status as participants in a voluntary arrangement, rather than as citizens denied equal protection or due process.

In contrast to that factual situation, the provision of garbage pick-up services within the City of Atlanta is neither voluntary nor contractual in nature. The City of Atlanta charges residences within its jurisdictional limits for pick-up service, regardless of the extent to which the owners of such residences actually avail themselves of the service. *City of Atlanta Code of Ordinances, Section 130-81*. This brings your present issue closer to the facts of *Jarrett v. City of Boston*, 209 Ga. 530, 74 S.E.2d 549 (1953), in which a schedule of water rates was challenged that imposed fixed monthly rates on customers without water meters, while customers with meters were charged by the amount of water used. The Georgia Supreme Court weighed the equity of this schedule of charges according to the following principle:

A difference in conditions of service justifies a difference in charge; but when a difference in charge is based on a difference in service, it must have some reasonable relation to the amount of difference, and cannot be so great as to produce an unjust discrimination.

Jarrett, 209 Ga. at 531, 74 S.E.2d at 551. Unless the City of Atlanta can demonstrate a "reasonable relationship" between the various levels of garbage pick-up fees established by the Council "to the amount of difference" in service offered, its schedule of rates could be invalidated when measured against the principle articulated in *Jarrett*.

The vulnerability to legal challenge of any set of charges would be determined, not by the existence of different rates or by the existence of exemptions, but by whether, having chosen to set charges according to

The Honorable Clair Muller

April 16, 1997

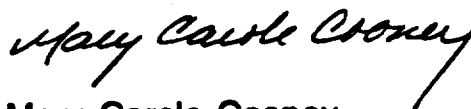
Page 4

some measurement of service, the Council makes exceptions to those charges that have no relationship to the services forming the basis for its schedule of charges. Measured against both the present property frontage basis for billing, and volume- or incentive-based billing, the proposal to grant age- and income-based exemptions (which have no demonstrable relationship to property size or volume of solid waste picked up) will not, in my opinion, justify the difference between the rates or total exemptions offered to senior citizens and the rates charged to other persons who may be younger than 65 years of age, but also have low incomes, and who may generate minimal solid waste or reside on smaller parcels of property.

Offering low-income discounts to senior citizens only, within a rate schedule premised on property frontage or volume of solid waste, would make the entire schedule of rates unlikely to withstand challenge on either an equal protection or unjust discrimination basis.

I hope that this has been responsive to your request. Please let me know if I may be of further assistance,

Very truly yours,



Mary Carole Cooney
Deputy City Attorney

cc: Clifford E. Hardwick, IV
City Attorney

Joe M. Harris
Deputy City Attorney

O. V. Brantley
Deputy City Attorney